IN THE SUPREME COURT OF MISSOURI

No. 84425

IN THE MATTER OF THE LIQUIDATION OF PROFESSIONAL MEDICAL INSURANCE CO. and PROFESSIONAL MUTUAL INSURANCE CO. RISK RETENTION GROUP:

ARNOLD J. WOLF, D.P.M., ARTHUR AXELBANK, M.D., and JONATHAN E. KLEIN, M.D.,

Appellants,

v.

A.W. MCPHERSON, DEPUTY DIRECTOR, MISSOURI DEPARTMENT OF INSURANCE,

Respondent.

Appeal from the Circuit Court of Jackson County, Missouri
Honorable Lee E. Wells, Judge

SUBSTITUTE BRIEF OF RESPONDENT

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JURISDICTIONAL STATEMENT

This is an appeal from a judgment entered by the Circuit Court of Jackson County, Missouri in the liquidation proceedings involving two affiliated Missouri insurance companies, Professional Medical Insurance Company and Professional Mutual Insurance Company Risk Retention Group. The judgment, entered by the trial court below on December 20, 2000, denied Appellants' motion to intervene in the Professional Medical Insurance Company estate and rejected their request for the appointment of a trustee for the Professional Mutual Insurance Company Risk Retention Group estate. The case does not involve the Constitution of the United States or the State of Missouri, nor does it otherwise fall within the exclusive jurisdiction of the Missouri Supreme Court. Original jurisdiction of this appeal therefore was vested in the Missouri Court of Appeals, Western District, pursuant to Article V, Section 3 of the Missouri Constitution of 1945, as amended. The Court of Appeals, Western District, entered its Order and Memorandum Opinion on February 13, 2002, affirming in all respects the judgment of the trial court. Upon application by Appellants, this Court ordered transfer after opinion. Jurisdiction to order transfer after opinion and to hear this appeal is vested in the Supreme Court pursuant to Article V, Section 10 of the Missouri Constitution of 1945, as amended.

STATEMENT OF FACTS

Professional Medical Insurance Company ("ProMed") and Professional Mutual Insurance Company Risk Retention Group ("RRG") were Missouri-domiciled insurance companies that underwrote medical malpractice coverage, primarily for osteopathic physicians. In April, 1994, the Jackson County Circuit Court declared them insolvent and placed both companies in liquidation. They are well known to the Court of Appeals and this Court, having been the subject of a number of appeals and extraordinary writs. These seven-year-old liquidation proceedings have also been very successful, with both ProMed (a stock company) and RRG (a mutual company) paying all policyholders and claimants in full, with interest, and returning substantial surplus to their stockholders and members. Appellants in this action are members of RRG and, along with 102 other members, have thus far received over $12 million in surplus distributions from the RRG estate. Here, they seek to intervene in the ProMed estate and have a trustee appointed for the RRG estate to assert claims on their behalf against certain ProMed stockholders. Circuit Judge Lee Wells, who until his retirement in late 2000 had supervised the ProMed and RRG estates since their inception, denied Appellants' motion to intervene and rejected their request to appoint a trustee. Appellants thereafter brought this appeal.

Respondent in this action is the Director of the Missouri Department of Insurance who, by statute, also acts as the Receiver for ProMed and RRG. Scott B. Lakin became the new Director of Insurance on March 15, 2001, and thus became the statutory receiver for both companies. This action, however, continues in the name of his predecessor, A. W. McPherson.

Appellants became claimants in the RRG estate like all other claimants and just as the Missouri insurance statutes provide: they received notice of the ProMed and RRG liquidation proceedings, they were advised of the court-ordered bar date of April 7, 1995, the date by which all claims would have to be filed against either ProMed or RRG, and all three Appellants filed timely proofs of claim in the RRG estate. Appellants did not file claims in the ProMed estate. (LF 1)

From 1994 to 1998, Respondent went about the task of marshalling the assets of ProMed and RRG and adjusting their claims. By 1998, it became apparent that both estates would have substantial surpluses to distribute to their ownership classes. In the course of ruling on the proofs of claims filed by those claiming an ownership interest in ProMed, Respondent undertook a thorough investigation of the circumstances of the formation of RRG and ProMed and an analysis of the ownership rights of the stockholders and members. Respondent reported his findings and recommendations to the trial court on February 4, 1999. (LF 1-6) His findings and recommendations ultimately formed the basis for two comprehensive plans for the complete liquidation and distribution of surplus for the ProMed and RRG estates. Certain ProMed stockholders (who also happen to be the targets of Appellants' proposed lawsuit, LF 29-37) challenged the RRG liquidation scheme, and the rejection of that challenge (*see* Appendix to Appellants' Substitute Brief, A1-17) enabled Respondent to begin implementing the RRG plan and make a $12.5 distribution to Appellants and the other eligible RRG members.

In his February 4, 1999 memorandum to the trial court, Respondent advised the court in some detail how Glenn Jourdon, the president of RRG, utilized the mutual company's surplus to capitalize ProMed and become, indirectly, ProMed's majority shareholder. (LF 1-3) Respondent, in his dual capacity as Receiver for RRG and Receiver for ProMed, also advised the court that he would not be taking action to reverse those transactions; rather, he proposed to distribute surplus on the basis of the ownership structure of the two companies as it existed on the date the companies were placed in liquidation. (LF 4-5) With full disclosure of these material facts, Judge Wells elected not to appoint a trustee to investigate claims ProMed might have had against RRG or claims RRG might have had against ProMed. Instead, the court approved the ProMed plan of liquidation in June, 1999. (LF 7-8)

This issue of conflict of interest was next raised by Appellant Wolf in his initial motion to intervene, filed on October 27, 1999. Pending before the trial court at the time was Respondent's application to approve the RRG plan of liquidation. In his intervention motion, Wolf argued that Respondent could not be an adequate advocate for his interests "because the Receiver for RRG is also acting as Receiver for ProMed, [and] he has an inherent conflict of interest in advancing claims against ProMed for the benefit of Dr. Wolf, similarly situated RRG policyholders, and/or RRG itself." (LF 23-24) Again, with full knowledge of the facts regarding the formation of RRG and ProMed, and considering Dr. Wolf's express claim that Respondent had a conflict of interest, the trial court elected not to appoint a trustee for RRG. Instead, the court approved the RRG liquidation plan in November, 1999. (Appendix to Appellants' Substitute Brief, A6)

Mr. Jourdon also raised conflict of interest in his challenge to the RRG liquidation plan. (Appendix to Appellants' Substitute Brief, A13) In his appeal to the Court of Appeals, Jourdon, like Appellant Wolf in his motion to intervene, argued that Respondent had a conflict of interest acting as the Receiver for ProMed and as the Receiver for RRG, because "the Receiver in one capacity certainly [could not] be expected to challenge what he, in another capacity, want[ed] to accomplish." (Id.) But Jourdon was not a claimant in the RRG estate, just as Appellants are not claimants in the ProMed estate, and on this basis the Court of Appeals in October, 2000, held that "Receiver did not have a conflict of interest." (Id.)[1]

Conflict of interest was also thoroughly examined by counsel and the trial court in the October 30, 2000, November 13, 2000 and December 20, 2000 hearings on Appellants' motion to intervene. In these hearings, Respondent advised the trial court of the basis for a claim of conflict of interest (10/30/00 Tr. 19; 12/20/00 Tr. 31-34); he advised the court that he would not be pursuing claims against ProMed or any of ProMed's stockholders (10/30/00 Tr. 19-20; 11/13/00 Tr. 14; 12/20/00 Tr. 32-34); but said that he would assign causes of action to Appellants and the rest of the RRG members, so long as the pursuit of those causes of action did not disrupt either the ProMed or RRG liquidation plans (10/30/00 Tr. 20-22; 11/13/00 Tr. 20-21; 12/20/00 Tr.

[1] Jourdon also sought transfer to this Court on the issue of conflict of interest, but his Application for Transfer was denied on February 13, 2001. *McPherson v. Jourdon*, SC 83295 (February 13, 2001).

17-18). Appellants nevertheless pressed their demand for the appointment of a trustee to assert those causes of action, and in the end, Judge Wells rejected their demand in favor of maintaining the integrity of the ProMed and RRG liquidation plans:

> THE COURT: Well, Mr. Meyers [Appellants' counsel], I think in our last get together it was clear that I was not going to allow you to intervene to make a claim against the [ProMed] receivership or any part of it. However, it appeared to me that you might have some legitimate claims against individuals. And that's why I carved out of the order the provision where the receiver, if the receiver so desired, could make an assignment of any claims that would be against those who might . . . this would be individual claims, not against the receivership or RRG, ProMed or ProMutual. Not against those people. Those claims are closed.
>
> But the claims against individuals that you're interested in would not be closed. And that's what be assigned to you. And that's the only basis on which I'm willing to approve it. I think, in fact, the receiver doesn't need my approval to do that. I think he has a right under the law to do it, and he evidently is willing to do it. And he's going to do it on his terms, which are primarily to ensure that nothing is going to keep this receivership from a timely closure. So you should probably take what you have with whatever blessings we can give you and get on with it and start perfecting your claim.

(12/20/00 Tr. 29-30)

On December 21, 2000, Respondent executed the assignment referenced by Judge Wells, which assigned RRG claims against individuals to all of the RRG members, including Appellants. *See* Appendix to Respondent's Substitute Brief, R1-4.

As of this date, no action has been taken by Appellants or any of the other RRG members on the assigned claims.

POINTS RELIED ON AND AUTHORITIES

I. The Trial Court Did Not Err In Denying Appellants' Motion To Intervene Because The ProMed Receivership Estate Is Not An "Action" Giving Appellants A Right Of Intervention Under Supreme Court Rule 52.12(a) And Because Appellants Failed To Establish An Immediate And Direct Interest In That Proceeding in That They Filed No Claim In The ProMed Estate.

Ainsworth v. Old Security Life Ins. Co., 685 S.W.2d 583 (Mo. App. 1985)

Ainsworth v. Old Security Life Ins. Co., 694 S.W.2d 838 (Mo. App. 1985)

Supreme Court Rule 52.12(a)

Murphy v. Carron, 536 S.W.2d 30 (Mo. 1976)

State ex rel. City of Jackson v. Grimm, 555 S.W.2d 643 (Mo. App. 1977)

Jennings v. City of Kansas City, 812 S.W.2d 724 (Mo. App. 1991)

Mo. Rev. Stat. §375.1206

In re C.G.L., 28 S.W.3d 502 (Mo. App. 2000)

II. The Trial Court Did Not Err In Not Appointing A Trustee To Investigate And Pursue Claims On Behalf Of RRG Members Because Mo. Rev. Stat. §375.710 Does Not Mandate That Particular Remedy But Instead Gives The Trial Court Broad Discretion To Fashion Appropriate Remedies As "Shall Seem Best Adapted To The Protection Of The Rights Of All."

Mo. Rev. Stat. §375.710

McPherson v. Jourdon, WD 57950 (October 31, 2000)(A1-17)

Angoff v. Holland-America Ins. Co. Trust, 937 S.W.2d 213 (Mo. App. 1996)

Mo. Rev. Stat. § 375.1176.1

Murphy v. Carron, 536 S.W.2d 30 (Mo. 1976)

Jennings v. City of Kansas City, 812 S.W.2d 724 (Mo. App. 1991)

ARGUMENT

The trial court was correct in rejecting Appellants' motion to intervene in the ProMed receivership estate, and correct in rejecting Appellants' request to have a trustee appointed to pursue RRG claims against ProMed. Although the court allowed them to participate in the proceedings for both estates as if they were intervenors, Appellants were not claimants in the ProMed estate and, more than four years after passage of the bar date for filing claims, Appellants could not establish an adequate basis that would permit formal intervention. And as for the appointment of a trustee for RRG to pursue claims against ProMed or any of its stockholders, the trial court was not unaware of Appellants' contention of a conflict of interest. With full knowledge of the underlying facts, and mindful of the remedies provided in Mo. Rev. Stat. §375.710, the trial court elected not to appoint a trustee, but instead opted to cure any conflict -- if indeed there was a conflict -- by "mak[ing] such other orders providing for the settlement, adjustment or enforcement of the rights of the insurer in the matter as to the court shall seem best adapted to the protection of the rights of all." Those orders consisted of the trial court's initial approval of the ProMed and RRG plans of liquidation and the court's subsequent affirmation of those liquidation plans. The net effect of those liquidation plans was to distribute RRG's surplus to RRG's members and distribute ProMed's surplus to ProMed's stockholders.

Appellants' appeal should be denied.

I. THE TRIAL COURT DID NOT ERR IN DENYING APPELLANTS' MOTION TO INTERVENE BECAUSE THE PROMED RECEIVERSHIP ESTATE IS NOT AN "ACTION" GIVING APPELLANTS A RIGHT OF INTERVENTION UNDER SUPREME COURT RULE 52.12(a) AND BECAUSE APPELLANTS FAILED TO ESTABLISH AN IMMEDIATE AND DIRECT INTEREST IN THAT PROCEEDING IN THAT THEY FILED NO CLAIM IN THE PROMED ESTATE.

In the proceeding below, Respondent did not oppose Appellants' motion to intervene (12/20/00 Tr. 16-17), but here supports the trial court's denial of their motion for three reasons.

First, insurance company receivership proceedings in general are not considered "actions" for purposes of Supreme Court Rule 52.12(a) and, thus, Appellants had no right to intervene in the ProMed estate[2]. This very issue was decided by the Court of Appeals

[2] Although liquidated together in one proceeding, the ProMed and RRG receivership estates are separate and distinct entities, and claimants in one estate do not qualify as claimants in the other estate unless he or she has filed a claim in both estates. *See* Appendix to Appellants' Substitute Brief, A 8-9.

in *Ainsworth v. Old Security Life Ins. Co.,* 685 S.W.2d 583 (Mo. App. 1985)("*Ainsworth I*"). There, the sole stockholder of an insurance company in liquidation sought an order from the trial court allowing it to intervene as a party under Rule 52.12. Intervention was denied, and on appeal the court held that "the administration of receivership estates is not an action in which Rule 52 gives a right of intervention." 685 S.W. 2d at 586. Rather, the court left the question and circumstances of intervention up to the sound discretion of the trial court supervising the receivership.[3]

Here, Appellants sought to intervene in the ProMed receivership estate generally, for all purposes, five years after the fact and just as that estate was beginning to wind up its affairs. (LF 22-24) Nothing in their motion to intervene would have restricted or limited their involvement in the ProMed estate in any way. Judge Wells simply and correctly exercised his sound discretion in keeping the number of persons participating in

[3] The appropriate standard of review here is not, as Appellants assert, *Murphy v. Carron*, 536 S.W.2d 30, 32 (Mo. 1976). Rather, the trial court's denial of Appellants' motion to intervene should be reviewed for abuse of discretion. Since Appellants have no right to intervene generally in the ProMed estate, whether they are permitted to do so is left to the sound discretion of the trial court. *See State ex rel. City of Jackson v. Grimm*, 555 S.W.2d 643, 647 (Mo. App. 1977). And here, Appellants have failed to show that the trial court's denial of their intervention motion "offends the logic of the circumstances" or that it was "arbitrary and unreasonable." *Jennings v. City of Kansas City*, 812 S.W.2d 724, 735-6 (Mo. App. 1991).

the ProMed estate limited to those persons who had complied with the insurance statutes and actually filed a proof of claim against the ProMed estate.

Second, at the time Judge Wells denied Appellants' motion to intervene, there was no pending, ancillary action in the ProMed estate in which Appellants had an "immediate and direct" interest that would permit intervention. All that was left to do in either proceeding was the distribution of surplus from the ProMed and RRG estates. Although the court in *Ainsworth I* held that no one had a right to intervene generally in an insurance receivership proceeding, it also held, in a follow up case, that intervention might be proper if limited to a discrete, ancillary matter pending in the proceeding in which the proposed intervenor had an "immediate and direct" interest. In *Ainsworth v. Old Security Life Ins. Co.*, 694 S.W.2d 838 (Mo. App. 1985)("*Ainsworth II*"), the sole shareholder claimant of the insolvent insurer, which had been denied intervention on a number of occasions throughout the long history of that receivership proceeding, was finally allowed to intervene at the very end of the case in a discrete matter involving the receiver's attorney's request for additional compensation. The court allowed intervention in that one matter only, and only because the resolution of the attorney's request would "directly and immediately" impact the shareholder claimant's recovery from the estate. 694 S.W.2d at 840. In other words, if the attorney got more, then the shareholder claimant would get less on its claim against estate assets.

In the present case, however, at the time the motion to intervene was denied, there was no pending, ancillary action in the ProMed estate that would adversely affect Appellants' share of RRG's surplus. The RRG plan was approved and Jourdon's

challenge to that plan had been rejected and Appellants were not claimants in the ProMed estate. What Appellants were going to receive out of the RRG estate was fixed, and nothing that happened in the ProMed proceeding could change that. Instead, what Appellants were trying to do, as they made clear in their supplemental suggestions in support of their motion to intervene, was to bring a brand new action against ProMed's stockholders in an effort to prove that Appellants "were the true owners of the stock of ProMed." (LF 57).

Third, even if the ProMed receivership estate was an "action" to which Supreme Court Rule 52.12(a) applied, then Appellants failed to open the door to that estate because they failed to show any immediate and direct interest in the assets of the ProMed estate. *See In re C.G.L.*, 28 S.W. 3d 502, 505 (Mo. App. 2000). The reason for this is simple: Appellants, all of them being members of RRG, filed proofs of claim in the RRG proceeding, thereby entitling them to share in the distribution of assets from that estate, but they filed no claim in the ProMed estate. Under the "exclusive and self-contained" statutory scheme adopted by the legislature for the liquidation of insurance companies, *O'Malley v. Continental Life Ins. Co*., 75 S.W. 2d 837, 838 (Mo banc 1934), to make a claim against the assets of an insolvent insurer, a claimant must file a proof of claim form with the liquidator of that insurer before the claims bar date established by the trial court. Mo. Rev. Stat. § 375.1206. Here, there is no dispute that Appellants failed to perfect any claim they may have had against ProMed's assets because they did not file a ProMed proof of claim. And, if they have no claim against ProMed's assets, then they have no interest - - immediate, direct or otherwise - - in the ProMed receivership proceeding.

In their Substitute Brief at 22, Appellants suggest that *Ainsworth I* supports their right of intervention and that their appropriate remedy might be in the nature of a stockholder's derivative action. Respondent submits that Appellants' reliance on this suggestion by the *Ainsworth I* court, 685 S.W. 2d at 587, is misplaced, because the Court of Appeals in that case held out this suggested remedy to persons who had actually complied with the insurance statutes and who were claimants in that particular liquidation estate. In the present case, the proper procedure that Appellants should have followed was to file a claim in the ProMed estate, claiming an ownership interest in ProMed's surplus assets, just as they filed claims in the RRG estate.[4] Respondent would have been obligated to accept or reject their claims against ProMed, and if rejected, Appellants could have objected to Respondent's determination and taken their objection to the trial court and ultimately this Court. *See* Mo. Rev. Stat. § 375.1214. As it is, they made no claim in the ProMed estate before the bar date and cannot do so now.

For these reasons, the trial court did not err in denying Appellants' motion to intervene.

[4] Whether a derivative action as suggested by the Court of Appeals in *Ainsworth I* finds any place in the "exclusive and self-contained" statutory scheme for the liquidation of insurance companies is highly questionable but need not be addressed here, since Appellants are not claimants in the ProMed estate.

II. THE TRIAL COURT DID NOT ERR IN NOT APPOINTING A TRUSTEE TO INVESTIGATE AND PURSUE CLAIMS ON BEHALF OF RRG MEMBERS BECAUSE MO. REV. STAT. §375.710 DOES NOT MANDATE THAT PARTICULAR REMEDY BUT INSTEAD GIVES THE TRIAL COURT BROAD DISCRETION TO FASHION APPROPRIATE REMEDIES AS "SHALL SEEM BEST ADAPTED TO THE PROTECTION OF THE RIGHTS OF ALL."

That Respondent acted as the Receiver for both ProMed and RRG was no secret to the trial court; Judge Wells appointed him and Missouri law mandates that he occupy that position. Mo. Rev. Stat. § 375.1176.1. Nor was it a secret that Glenn Jourdon used RRG surplus to capitalize ProMed, or that Respondent elected not to take any action to reverse those transactions. All of this was made clear to the trial court in Respondent's February 4, 1999 memorandum. This gave the trial court several different options: he could reject Respondent's recommended liquidation plans, he could approve them, he could appoint a trustee to investigate and pursue claims that one estate might have against the other, or he could "make such orders providing for the settlement, adjustment or enforcement of the rights of the insurer in the matter **as to the court** shall seem best adapted to the protection of the rights of all." Mo. Rev. Stat. §375.710 (emphasis supplied). Judge Wells decided

that the best course was to approve Respondent's recommended plans of liquidation and he thus fulfilled any obligation he may have had under §375.710.[5]

As a preliminary matter, it must be determined whether a conflict of interest even existed. In its memorandum decision in *McPherson v. Jourdon*, WD 57950 (October 31, 2000)(Appendix to Appellants' Substitute Brief, A1-17), the Court of Appeals resolved that question by determining whether ProMed had an interest in the RRG estate. "In this case, the record demonstrates the Receiver did not have a conflict of interest because . . . ProMed did not have a valid claim against the assets remaining in RRG after satisfaction of Class 2 through 8 claims." (Appendix to Appellants' Substitute Brief, A13) Similarly, in this case, Appellants have not shown that RRG has a claim to the assets remaining in the ProMed estate after satisfaction of the higher priority claimants. Although the RRG Receiver did make a claim against the ProMed estate on the basis of the ProMed preferred stock RRG owned (LF 3-4), he made no claim against ProMed or

[5] Again, the appropriate standard of review here is not, as Appellants assert, *Murphy v. Carron*. Rather, §375.710 gives the supervising court broad discretion in remedying a conflict of interest, if a conflict exists, and the court's choice of one remedy (approval of the liquidation plans) over another remedy (appointment of a trustee) should be reviewed for abuse of discretion. "Once the appellate court has found that the trial court had alternative choices that would not yield a result contrary to the law, . . . the review ends and the appellate court will affirm any of those choices." *Jennings v. City of Kansas City*, 812 S.W.2d at 736.

its stockholders on the basis of ProMed's formation or capitalization. And if RRG has no claim against ProMed or ProMed's assets (the bar date for making any new claims has long since passed), then Respondent had no conflict of interest.

Even if Appellants could establish a conflict of interest, it is clear that Appellants' complaint is not that Respondent failed to report the conflict of interest to Judge Wells; the claimed conflict of interest was reported to the supervising court in Respondent's February, 1999 memorandum, in Appellant Wolf's October, 1999 motion to intervene, in Glenn Jourdon's appeal to the Court of Appeals, in Jourdon's Application for Transfer to this Court, and in each of the October, November and December, 2000 hearings on Appellants' motion to intervene. Instead, their complaint is simply that Judge Wells failed to grant them the particular relief they sought. But Judge Wells, fully aware of the circumstances, decided not to unwind the ProMed and RRG liquidations, but to keep them on track so that those proceedings could finally be closed. *See Angoff v. Holland-America Ins. Co. Trust*, 937 S.W.2d 213, 218 (Mo. App. 1996)("[t]he receivership court has the discretion to expedite closure of the estate"). In order to "protect the rights of all," as §375.710 anticipates, he affirmed the liquidation plans and endorsed Respondent's plan to assign certain causes of action to the RRG members, including Appellants, that would allow Appellants to pursue most, though perhaps not all, of their claims against ProMed stockholders.

The record discloses that Judge Wells fulfilled any obligation he may have had under §375.710, and he made appropriate orders protecting the rights not only of Appellants, but those of ProMed, RRG, their creditors and ownership classes. It is up to

Appellants now, as Judge Wells remarked at the December 20, 2000 hearing, to "take what [they] have with whatever blessings we can give you and get on with it and start perfecting [their] claim." (12/20/00 Tr. 29-30)

CONCLUSION

By virtue of Respondent's assignment of claims to Appellants and the rest of the eligible RRG members, Appellants have been given the opportunity to pursue claims against the ProMed stockholders, if they so choose. They are claims that have nothing to do with the assets or distribution of assets from the ProMed estate and they do not have to be brought within the ProMed proceeding. Appellants are free to pursue those claims on their own, but they should not be allowed to take such action that would further delay the closing of these eight-year old receivership estates. The trial court was correct to keep these proceedings on track to closure, and correct in denying Appellants' motion to intervene and to appoint a trustee. Respondent urges this Court to do likewise and deny Appellants' appeal.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that two copies of the above and foregoing were served by U.S. Mail this 3rd day of July, 2002, to:

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CERTIFICATE OF COMPLIANCE

I certify that:

1. The brief includes the information required by Supreme Court Rule 55.03;

2. The brief complies with the limitations contained in Supreme Court Rule 84.06(b); and

3. According to the Word Count Function of counsel's word processing software, the brief contains 4,620 words.

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